Supreme Court, U.S.
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No. _____

In the
Supreme Court of the United States
October Term, 1994

Steven I. Radloff and Barbara Radloff,

Petitioners,

vs.

First American National Bank of St. Cloud, N.A.; and First Farm Corporation, Inc. of St. Cloud, a Minnesota Corporation, Linda Sinotte, in her official capacity as a Court Administrator,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether concerted constitutional violations of equal access to the courts and due process, between a private litigant and the presiding state court judge, is actionable under *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980), and not barred by the so-called *Rooker-Feldman* doctrine?

PARTIES TO THE PROCEEDINGS

The caption of the case in this Court contains the names of all parties to the proceeding in the United States Court of Appeals for the Eighth Circuit. [Supreme Court Rule 14.1(b)].

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

PARTIES TO THE PROCEEDINGS ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 2

JURISDICTION 2

CONSTITUTIONAL PROVISIONS INVOLVED 2

STATEMENT OF CASE 3

A. Proceedings and Disposition in the Courts Below. 3

B. Facts comprising the unconstitutional claims. 4

C. Actual bias is linked from the ex parte hearing to the decision issued. 6

D. The state court case was no less spectacular 7

REASONS FOR GRANTING THE WRIT 8

1. The constitution's supremacy has been usurped by a judgment that conflicts with precedent from this Court. Rule 10.1(c) 8

2. This court has only partially addressed this issue and the constitution's superiority is an important issue to resolve. Rule 10.1(c)..... 12

3. Constitutional law, as further defined by federal law, should compel this Court to review this decision to prevent immunizing violations. Rule 10.1(c)..... 12

4. A biased judge is a structural defect disenfranchising the harmless error doctrine..... 13

5. Radloffs' rights to access has been violated..... 14

6. Radloffs' rights to an impartial tribunal has been violated..... 15

7. Radloffs' rights to procedural due process has been violated..... 15

8. Paramount constitution principles are at issue. 16

CONCLUSION..... 16

TABLE OF AUTHORITIES

CONSTITUTIONAL PROVISIONS

Fifth Amendment 2

First Amendment 2, 10

Fourteenth Amendment 3

CASES FROM THE UNITED STATES SUPREME COURT

Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986) 5

Arizona v. Fulminate, 499 U.S. __, __, 111, S.Ct. 1246, 1254 (1991) 13

Berger v. United States, 255 U.S. 21, 41 S.Ct. 230 (1921) 15

Chambers v. Baltimore & Ohio Railroad, 297 U.S. 142, 148 (1907) 16

Cleveland Board of Education v. Loudermill, 470 U.S. 532, 542 (1985) 11, 15

Dennis v. Sparks, 449 U.S. 24, 27-28 (1980) ..... i, 8, 10, 15

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 483-486 (1983) 9, 12

Gagon v. Scarpelli, 411 U.S. 778, 785-786 (1973) 10

Haring v. Prosise, 462 U.S. 306, 322 (1983) 12

Liljeberg v. Health Services Acquisition Corp., 108 S.Ct. 2744, 2756 (1982) 13

Malley v. Briggs, 475 U.S. 335, 344-5 n. 7 (1986) 10

Migra v. Warren City School Dist., 465 U.S. 75, 79 (1984) 12

Monore v. Pape, 305 U.S. 167, 187 (1961) 10

Pennzoil Co. v. Texaco, 107 S.Ct. 519, 1529-1532 (1987) 12

Radloff v. First American, 112 S.Ct. 173 (1991) 5

Radloff v. First American, 112 S.Ct. 650 (1991) 5

Reich v. Collins, 113 S.Ct. 547, 549 ..... 11, 15

Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923) 9

Screws v. United States, 325 U.S. 91, 108 (1945) 12

Taylor v. Hayes, 418 U.S. 488, 501-503 (1974) 14

Wright v. Roanoke Redevelopment and Housing Authority, 107 S.Ct. 766, 774 (1987) 13

CASES FROM THE UNITED STATES CIRCUIT COURTS

Bell v. Milwaukee, 746 F.2d 1205, 1260-63 (7th Cir. 1984) 14

Brantley v. Surles, 718 F.2d 1354,
1360 (5th Cir. 1983) 9

Chrissy et al. v. Mississippi DPW, 925 F.2d 844, 850
(5th Cir. 1991) 13

Click v. Copeland, 970 F.2d 114 (5th Cir. 1992) 9

Germany v. Vance, 868 F.2d 9,
15 (1st Cir. 1989) 14

Harrison v. Springdale Water & Sewer Com'n,
780 F.2d 1422, 1431 (8th Cir. 1986) 14

Hendrickson v. Griggs, 672 F. Supp. 1126,
1132 (N.D. Iowa 1987) appeal dismissed
856 F.2d 1041 (8th Cir. 1988) 12

Hickey v. Duffy, 827 F.2d. 234,
240-243, (7th Cir. 1987) 12, 13

Jackson v. Procunier, 789 307, 311
(5th Cir. 1986) 14

Pizto v. Bethlehem Steel Corp., 884 F.2d.
116, 119-120 (4th Cir. 1989) 9

Rankin v. Howard, 633 F.2d 844, 845 (9th Cir. 1980) 13

Rheuark v. Shaw, 628 F.2d 297, 302 (5th Cir. 1980) 14

Rylands v. Shapiro, 708 F.2d 967, 972
(5th Cir. 1983) 14

Texaco v. Pennzoil Co., 784 F.2d 1133, 1144 (2nd Cir. 1986) 12

U.S. v. Kelly, 888 F.2d 732,745 (11th Cir. 1989) 12

U.S. v. Real Property at Section 18, 976 F.2d 515, 519 (9th Cir. 1992) 9

CASES FROM THE STATE OF MINNESOTA

Graham v. Special Sch. Dist. No. 1, 472 N.W.2d 114, 119 (Minn. 1991) 10

Hauser v. Mealey, 263 N.W.2d 803, 808 (Minn. 1978). 9

In re, Welfare of MDO, 462 N.W.2d 370, 376 (Minn. 1990) 9

Matson v. Underwriters of Lloyds, 414 N.W.2d 717 (Minn. 1987) 9

Radloff v. First American, 455 N.W.2d 490, rev. denied July 13, 1990 ..... 4, 13

Radloff v. First American, 470 N.W.2d 154 (Minn. App. 1991), rev. denied 11

CASE FROM THE UNITED STATES DISTRICT COURTS

Thompson v. Sanborn, 568 F. Supp. 385, 390 (D.N.H. 1983) 14

STATUTES

11 U.S.C. § 350 6

28 U.S.C. § 1254 2

M.S.A. § 542.16 11

M.S.A. § 485.07(1). 15

OTHER AUTHORITIES

Restatement (Second) of Judgment § 20, comment e and Illustration 4 at 173; 9

RULES

Rule 10.1(c) 8, 12

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1994
No.

STEVEN I. RADLOFF AND
BARBARA RADLOFF,

Petitioners,

vs.

FIRST AMERICAN NATIONAL
BANK OF ST. CLOUD, N.A.;
and FIRST FARM CORPORATION,
INC. OF ST. CLOUD, a
Minnesota Corporation,
LINDA SINOTTE, in her
official capacity as a
Court Administrator,

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Petitioners Steven I. and Barbara Radloff (hereinafter "Radloffs") respectfully petition that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the Eighth Circuit entered October 20, 1994, affirming the trial court's grant of summary judgment to respondents and denial of Radloffs' motions for a preliminary injunction and partial summary judgment.

OPINIONS BELOW

The opinion dated October 20, 1994, affirmed a trial court's grant of summary judgment dated August 27, 1993. A1-23. Decisions of the federal courts below are unpublished.

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254. The decision upon which Radloffs claim jurisdiction of this Court is the judgment entered by the Clerk of Appellate Courts for the United States Court of Appeals for the Eighth Circuit on October 20, 1994. Under Supreme Court Rule 13.4, this petition is timely; it is filed within 90 days of the entered judgment.

CONSTITUTIONAL PROVISIONS INVOLVED

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the Government for redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a Grand Jury, except in cases arising in land or naval forces or, in the Militia, when actual service in time of war or public danger; nor shall any person be subject to the same offence twice by putting in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without

due process of law, nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the States wherein they reside. No State shall make or enforce law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

A. Proceedings and Disposition in the Courts Below.

Radloffs commenced this federal action on April 1, 1993, and moved the court for a preliminary injunction and partial summary judgment on August 27, 1993. Respondents' untimely summary judgment motion was granted on August 27, 1993. A6.[1] Radloffs commenced a timely appeal. The Eighth Circuit first denied, then granted, then denied Radloffs' request for oral argument. A3-4. Radloffs' counsel determined, through conversations with the clerk's office for the Eighth Circuit, that Judge Wollman was the Circuit Judge who wanted to hear Radloffs' case. Judge Wollman was removed from the panel. Without argument the panel affirmed without an opinion. A2. Radloffs moved the court for leave for a one day extension to file a petition for rehearing. It was denied, though Judge Morris Sheppard Arnold voted in favor of the leave.

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[1] "Axx" means appendix.

B. Facts comprising the unconstitutional claims.

On July 11, 1990, Judge Baland (the second state court trial judge) held a hearing on bank's second motion for summary judgment.[2] On July 12, 1990, Judge Baland initiated a substantive ex parte hearing with the bank. A judgment dismissing all of Plaintiffs' claims was entered on July 19, 1990. A30.

On September 14, 1990, First American sent to Radloffs' counsel their time record in preparation for the sanction hearing then scheduled for Monday, September 17, 1990. A35-36, 38. At the September 17, 1990 hearing Radloffs asked the Judge to reconsider his previous denial of Radloffs' motion for a postponement on the new ground so Radloffs could conduct depositions on the ex parte hearing that the judge, his law clerk, and bank's counsel held on July 12, 1990. A36. Judge Baland asked Mr. Hughes to explain to Radloffs what occurred at the ex parte conference. *Id.* Hughes did not reveal that matters of substance were indeed discussed. He stated: "The reference Mr. Pinotti makes to our Bill Statement, which was filed by Ms. Didier on Friday last week, is a reference to conversation that she had with the Court's Clerk concerning collection of some documents or Court's perusal following the Court's Summary Judgment Motion. We oppose the Motion at this point." A36. Judge Baland would admit (15 months later in his December 9, 1991, order) that Mr. Hughes' disclosure did not reveal that matters of substance were discussed. A27.

In response to Radloffs' petition to the Minnesota Supreme Court on the 'sanction' case, bank's counsel on June

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[2] After evidence was obtained in the initial discovery proceedings, on September 25, 1989, Judge Roger M. Klaphake denied Bank's motion for summary judgment, except for on one issue which was later reversed. See, *Radloff v. First American*, 455 N.W.2d 490, rev. denied July 13, 1990.

21, 1991, finally revealed substance was discussed in the July 12, 1990, ex parte hearing. A17.[3] The matters discussed were manifested in the July 19, 1990, opinion, written by Judge Baland, finding, on summary judgment no less, that Radloffs' "representations were false, and they knew it." A31.[4] He further reasoned that due to such [alleged] misrepresentations, Radloffs deprived the bank of "procedural due process". *Id* This ruling shows that Judge Baland knew that his initiation of the ex parte contact violated the constitution, when he discussed substance on July 12, 1990. Such an action violated Radloffs' rights to procedural due process, an impartial tribunal, access to the courts, and substantive due process. The bank's false representation, coupled with the state judge's silent acquiescence, deceived the Radloffs.[5] The June 21, 1991, affidavit did not itself admit that substance was discussed on July 12, 1990, but the morsel of fact stated fully indicated to all involved that a major issue was communicated. See, Judge Baland's Dec. 9, 1991 statement, A27.

Bank also had contact with appellate Judge Jack Davies (who later authored the opinion published at 470 N.W.2d 154). Before he was appointed to the appeals court bench, Bank asked Judge Davies for advice on a question involved in the first appeal, 455 N.W. 490.

Respondent Linda Sinotte is sued only in her official capacity for she failed to record the existence of the July 12,

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[3] Radloffs filed a petition in this Court on the merits of the state court case shortly after receiving this affidavit. A16. Said petition for certiorari was denied on October 7, 1991, and a petition for rehearing was denied on December 9, 1991, See *Radloff v. First American*, 112 S.Ct. 173 and 112 S.Ct. 650, (1991), respectfully.

[4] Remember this finding was on summary judgment. Radloffs' position was by law required to be believed. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986).

[5] "To sin by silence when one should protest, makes cowards of men (and women)." Abraham Lincoln.

1990, to keep minutes of the ex parte meeting, and record the other ex parte meetings that occurred. One additional known contact occurred on February 9, 1990, (the content of which is still unknown despite Radloffs' requests).

C. Actual bias is linked from the ex parte hearing to the decision issued.

What has been disclosed, concerning the ex parte hearing, is that Judge Baland initiated the hearing to determine, allegedly, the legality and finality of Radloffs' right to sue Bank for pre-bankruptcy wrongs. A17. Radloffs had purchased this right from the interim trustee.[6] A43. Echoing the content of the July 12, 1990, ex parte hearing Judge Baland not only 'found' that Radloffs' representations [to the bankruptcy trustee] were "false, they knew it"; but he granted practical immunity to Bank for all the wrongs it committed against Radloffs. A30. None of Radloffs claims survived and bank's chemical attacked against Radloffs crops was dispensed with deliberate ignorance. More alarming is that the finality of Radloffs' right to sue Bank for the pre-bankruptcy claims was completed more than six (6) months prior to Judge Baland's, July 12, 1990, ex parte hearing. A39. The state court litigation was commenced on June 3, 1988. Bank asked the interim trustee to intervene. After the pleadings were reviewed and consultation with the United States Trustee, the interim trustee decided not to intervene. On November 28, 1989, a year and a half later, the United States Bankruptcy Court closed the case under 11 U.S.C. § 350. A39. This order approved with finality the abandonment (or transfer) to Radloffs of the right to sue. Bank had a year and a half to contest the interim trustee's transfer of the estate's right to sue

[6] The trustee sold Radloffs' the right to sue Bank before Bank chemically attacked and destroyed Radloffs' asparagus crop, which was the original impetus for the state court action. A42.

the bank, and did nothing. The interim trustee never asserted a claim stating that he was defrauded. Only after the ex parte consultation, did Judge Baland make his biased proclamation.

D. The state court case was no less spectacular.

Radloffs claimed, in state court, that on May 27, 1986, the Bank, with the specific intent to destroy, had a pilot aerially attack 35 acres of asparagus crowns with a custom mixture of chemicals.[7] Bank's purpose was to prevent the Radloffs from acquiring the crops and competing with them in the marketplace. A28, 40-41. All 35 acres were killed or rendered commercially worthless, verified by Radloffs' expert. These asparagus crowns were perennial crops (lasting 15-20 years) and the net present value calculated by an agricultural economic expert to be worth over $500,000. The chemical attack was admitted and the value of the entire crop uncontested. Bank did claim a disputed interest in 25 of the 35 acres, but Radloffs had an uncontested right to at least 10 acres.

Bank, became a competitor of Radloffs by taking or withholding up to $53,000 of Radloffs' money and transferring at least $10,000 of it to their co-conspirator Mr. James Ambuehl. Bank with Ambuehl formed or operated several companies and, through such economic coercion, took over Radloffs' agri-business. Eventually First Farm, (bank's alter ego) became active in the asparagus market. On May 15, 1986, Bank's right to harvest twenty-five of the thirty-five acres expired. By that time very little (about 1 acre) of the asparagus crop was harvested. Bank demanded an extension and Radloffs initially refused. Then Bank, through its same

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[7] When these asparagus crowns are transplanted into production beds, every acre of crowns expands to 7 acres of plants producing spears for 12 to 15 years. Bank effectively destroyed 250 acres of production asparagus.

co-conspirator Mr. Ambuehl, threatened Mr. Radloff with physical harm. Bank then secretly paid Ambuehl $9,215.00 for services rendered. Due to the threat, Radloffs agreed to extend the 25-acre lease to expire on midnight May 27, 1986. On the evening of the last day of this coercively extended 25-acre lease, Bank had all 35 acres of asparagus drenched with a deadly combination of Roundup 2 (a contact killer) and crop oil (an inoculant). Bank's admitted motive was to prevent Radloffs from acquiring and selling the crop in competition with Bank in the marketplace. A28.

On July 18, 1986, Bank threatened to "chemically burn" more asparagus crops. This threat was renewed in July 1987. A seller was influenced by such threat to convey the property (previously owned by Radloffs) to Bank; despite Radloffs' higher bid, which would have closed before Bank's. A46.

In sum, this state case was one of extreme intentional misconduct by Bank, which has been buried by the bias of the state court judge. Deception has occurred when the state court judge initiated at least one substantive ex parte hearing, acquiesced in a knowingly false disclosure by Bank's counsel on September 17, 1990, and then refused to allow Radloffs' jurisdiction of the court to correct it. A19. His bias so permeated the state proceedings so as to poison the entire process.

REASONS FOR GRANTING THE WRIT

1. The constitution's supremacy has been usurped by a judgment that conflicts with precedent from this Court. Rule 10.1(c).

Below, each of the courts put the idea of finality as paramount to the constitution. This means that the *Rooker-Feldman* doctrine is superior to *Dennis v. Sparks*, 449 U.S. 24, 27-28 (1980), according to these opinions. Judge

Rosenbaum recognized, as a foregone conclusion, that the constitution was superior to deceit. A7. Yet he held that the state case law of *Matson* precluded his jurisdiction as res judicata, under *District Of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483-486 (1983), applying *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923). *Matson v. Underwriters of Lloyds*, 414 N.W.2d 717 (Minn. 1987) is premised on the party's actual knowledge of the claim. State law holds that when a court did not take jurisdiction over an issue, any prior litigation is unbinding. *In re, Welfare of MDO*, 462 N.W.2d 370, 376 (Minn. 1990); *Hauser v. Mealey*, 263 N.W.2d 803, 808 (Minn. 1978). It is uncontested that the state courts refused to take jurisdiction after Radloffs were informed that substance was discussed at the July 12, 1990 ex parte hearing.

Several circuit decisions agree with Radloffs' premise and disagree with the lower courts in this case. *U.S. v. Real Property at Section 18*, 976 F.2d 515, 519 (9th Cir. 1992) [holding that a guilty plea does not collaterally estop a civil forfeiture proceeding under 21 U.S.C. § 841, 881(a)(7) because the criminal court did not pass on the merits]; *Pizto v. Bethlehem Steel Corp.*, 884 F.2d. 116, 119-120 (4th Cir. 1989) [holding where a dismissal is based on procedural grounds, and, alternatively, substantive grounds, the procedural dismissal is paramount for it displaced the court's power to adjudicate]. *Brantley v. Surles*, 718 F.2d 1354, 1360 (5th Cir. 1983); [a procedural dismissal is not binding] citing with approval, Restatement (Second) of Judgment § 20, comment e and Illustration 4 at 173; accord, *Click v. Copeland*, 970 F.2d 114 (5th Cir. 1992).

Judge Baland admits that Radloffs were not notified that substance was discussed until the June 21, 1991, affidavit. A27. With such an admission Radloffs were without notice. The lower courts argued that it's Mr. Pinotti's fault; while the record is unequivocal that on September 17, 1990, the bank

intentionally misrepresented the truth about the content of the July 12, 1990, hearing. A21. The lower courts' argument misplaces the constitutional burden. *Malley v. Briggs*, 475 U.S. 335, 344-5, n. 7 (1986); citing *Monore v. Pape*, 305 U.S. 167, 187 (1961) [a person is responsible for the natural consequences of their action]. This language in *Monore v. Pape*, was cited as controlling in *Dennis v. Sparks*, 449 U.S. at 28, n.4. These cases hold that under the constitution, Bank's intentional misconduct makes them liable for all harm that arose.

Judge Baland's alternative finding that he was not prejudiced is invalid under both state law and precedent from this Court. In *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 119 (Minn. 1991) the court held that a full and fair hearing was not afforded by the school board when it was acting as its own judge, thus the teacher's First Amendment claim was not precluded. *E.g., Gagon v. Scarpelli*, 411 U.S. 778, 785-786 (1973). The fundamental element of res judicata, that it be based on a valid judgment, is where the lower courts erred and why doctrine needs to be reestablished. This element of validity is pivotal to Radloffs' petition: for, conversely, an invalid judgment must not be afforded any finality.

This Court in *Dennis v. Sparks*, held that a person who conspires with a state court judge may be sued as a co-conspirator for violating constitutional protections of another party. 449 U.S. at 27-28. When Bank first held the substantive ex parte contact on July 12, 1990, they decided, in concert with the judge, not to inform Radloffs. After Radloffs ferreted out the blurb in Bank counsel's time record that showed the contact, Bank next deceived Radloffs as to what occurred, with the judge's acquiesce. A36-38. Then for nine months neither the Bank, its counsel, nor the judge decided to correct the knowingly false statement. After Radloffs raised the issue in the 'sanctions' case in their brief and at oral

argument, and on petition to the Minnesota Supreme Court, only then was the June 21, 1991, affidavit served.

Judge Rosenbaum held Radloffs accountable for not raising the issue earlier. A19-20. This argument inversely shifted the burden to the party without notice. *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542, (1985). Radloffs had also endured sanctions issued by this same state court judge, only after Radloffs made the on-the-record demand for a disclosure and were deceived. A17. These sanctions were issued for allegedly initiating litigation without investigating the facts. See *Radloff v. First American*, 470 N.W.2d 154 (Minn. App. 1991), rev. denied.

In this federal litigation, Radloffs were penalized for waiting for evidence that established, substance was discussed on July 12, 1990. A21. Such reasoning has been reversed by *Reich v. Collins*, 113 S.Ct. 547, 549 (1994) [a tax case]. In *Reich*, this Court held that once a state has set up a post-deprivation remedy, and then, after the remedy materializes, it cannot then say that the remedy is unavailable. *Id.* What occurred in this case is analogous. State law provides for a remedy. M.S.A. § 542.16. After the evidence arose establishing the constitutional violations, the courts said there is no remedy. A21-23. *Reich*, held that such a remedial scheme violated the due process clause. This holding should compel a granting of this petition to establish that same doctrine in constitutional tort cases. *Id.*

The September 17, 1990, disclosure does not show that substance was discussed. A27. Judge Baland agreed. *Id.* Judge Rosenbaum did not find that the September 17, 1990, hearing disclosed that substance was discussed. A17-18. Radloffs claim, by citations to the record that they were deceived. Yet, the lower courts determined that Radloffs should have acted earlier then June 21, 1991.

2. **This court has only partially addressed this issue and the constitution's superiority is an important issue to resolve. Rule 10.1(c).**

Haring v. Prosise, 462 U.S. 306, 322 (1983); held that federal courts are not bound by state res judicata principles where a clear constitutional violation has occurred. *Haring,* was appositely applied in *Texaco v. Pennzoil Co.*, 784 F.2d 1133, 1144 (2nd Cir. 1986) rev'd on other grounds *Pennzoil Co. v. Texaco,* 107 S.Ct. 519, 1529-1532 (1987); (Justices Scalia, O'Connor, and Brennan concurring that the *Feldman* doctrine was inapplicable to the constitutional claims challenging the state court procedures). The *Pennzoil,* holding relative to the *Feldman,* case was cited with approval by *Hendrickson v. Griggs*, 672 F. Supp. 1126, 1132 (N.D. Iowa 1987) appeal dismissed 856 F.2d 1041 (8th Cir. 1988); [where the issues were not actually litigated, § 1983 claims are allowed]. Doctrine needs to be established with an opinion squarely addressing this issue.

3. **Constitutional law, as further defined by federal law, should compel this Court to review this decision to prevent immunizing violations. Rule 10.1(c).**

Radloffs stated a constitutional claim that was further defined by federal law. The preclusionary doctrine promulgated by *Migra v. Warren City School Dist.*, 465 U.S. 75, 79 (1984), and 42 U.S.C. § 2283 does not apply to 42 U.S.C. § 1983 constitutional claims defined by federal law. *Hickey v. Duffy*, 827 F.2d. 234, 240-243, (7th Cir. 1987); *Screws v. United States*, 325 U.S. 91, 108 (1945). Federal law defines when a judge becomes unconstitutionally partial as any time a substantive ex parte hearing occurs. *E.g., U. S. v. Kelly*, 888 F.2d 732,745 (11th Cir. 1989). Had the state court accepted they taken jurisdiction in Radloffs', the holding in

still inapplicable. *Hickey v. Duffy; Wright v. Roanoke Redevelopment and Housing Authority*, 107 S.Ct. 766, 774 (1987).

4. A biased judge is a structural defect disenfranchising the harmless error doctrine.

Judge Rosenbaum erroneously adopted Judge Baland's approach stating that because Judge Baland found that the bankruptcy order was final, Radloffs' prevailed on that issue, and no harm became of the substantive ex parte contact. A17. Finality was already decided by the United States Bankruptcy Court, more than six months prior to the July 12, 1990, ex parte hearing. A39. Judge Baland lacked jurisdiction to reopen the issue in any event. *Id.* Having a biased judge adjudicate the merits is a structural defect, not susceptible to the harmless error doctrine. *Arizona v. Fulminate*, 499 U.S. __, __, 111, S.Ct. 1246, 1254 (1991). The existence of a structural error requires a reversal of the offending adjudication. *Id.*

Without question is the undeniable fact that Radloffs have yet to talk to a jury of its peers on any claim. Judge Baland ordered the dismissal of all claims. A30. Radloffs have yet to prevail on any substantive issue, ever since Judge Baland began his July 12, 1990, ex parte hearing. *C.F., Radloff v. First American*, 455 N.W.2d 490 (Minn. App. 1990), rev. denied, July 13, 1990.[8] The state judge's prejudice spoils the adjudications so rendered. *Rankin v. Howard*, 633 F.2d 844, 845 (9th Cir. 1980) [fraudulently asserted jurisdiction], *Chrissy et. al. v. Mississippi DPW*, 925 F.2d 844, 850 (5th Cir. 1991), on remand, 780 F. Supp, 1104, 1126 (S.D. Miss. 1991); [issuance of orders in excess of jurisdiction], *Liljeberg v. Health Services Acquisition Corp.*, 108 S.Ct. 2744, 2756

[8] Again, Judge Baland was not involved with the first appeal.

(1982); *Taylor v. Hayes,* 418 U.S. 488, 501-503 (1974); [biased judge voids the prior proceedings]; *Harrison v. Springdale Water & Sewer Com'n,* 780 F.2d 1422, 1431 (8th Cir. 1986); holding that res judicata is inapplicable where there is no evidence of a constitutional violation at the inception of the state court proceedings; *Thompson v. Sanborn,* 568 F. Supp. 385, 390 (D.N.H. 1983).

5. Radloffs' rights to access has been violated.

Several circuits have found various acts of delay in court proceedings and suppression or destruction of evidence to constitute an impermissible burden on the rights of access to courts. See, *Germany v. Vance,* 868 F.2d 9, 15 (1st Cir. 1989); [intentional suppression of evidence infringes upon protected right of access to courts]; *Jackson v. Procunier,* 789 307, 311 (5th Cir. 1986) ["[a]ny deliberate impediment to access, even delay of access, may constitute a constitutional deprivation."]; *Bell v. Milwaukee,* 746 F.2d 1205, 1260-63 (7th Cir. 1984) [withholding of evidence that would allow an individual to prove his claims violates right of access]; *Rylands v. Shapiro,* 708 F.2d 967, 972 (5th Cir. 1983), [conduct which interferes with the right to institute a suit constitutes actionable impediment to right of access]; *Rheuark v. Shaw,* 628 F.2d 297, 302 (5th Cir. 1980) [conduct by state officers which delays appellate process may prejudice right of access to courts].

Radloffs' rights of access to the courts were violated at least five times. First, when the July 12, 1990, substantive ex parte hearing occurred. Second, when their request for discovery was denied. Third, by bank's misleading and false statements condoned by a silent presiding judge who knew the bank's disclosure was false. Fourth, when the bank denied Radloffs' requests under state and federal law for further disclosure. Fifth, when Radloffs sought additional

information, a vacation of judgment, and a recusal by Judge Baland, the state courts ruled that they were without jurisdiction to hear the claims, motions, appeals and petitions.

6. Radloffs' rights to an impartial tribunal has been violated.

As previously stated, actual bias occurs when a judge acts outside the constitutional parameters with a nonjudicial private party to defeat someone else's rights. *Dennis v. Sparks*, supra; *Berger v. United States*, 255 U.S. 21, 41 S.Ct. 230 (1921).

7. Radloffs' rights to procedural due process has been violated.

Linda Sinotte is liable under the constitutional rights to access and procedural due process, for her ministerial omissions under state law for failing to record the substantive hearing(s). M.S.A. § 485.07(1). Bank is liable for conducting the hearing and misrepresenting that no matters of substance were discussed in its September 17, 1990, disclosure. Compounding their liability is their refusal to disclose further contacts once they were determined. In *Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 542, 546 (1985) this Court explained that the "a person with a protectable property interest is entitled to (1) oral or written notice of the charges or substance, (2) an explanation of the evidence, and (3) an opportunity to present their position. *Id.* Radloffs were deprived of any effective notice, then once they received notice that substance was discussed, the court eliminated jurisdiction preventing any relief. Under the principles of *Reich v, Collins, supra.*, the state courts denial of jurisdiction, after the June 21, 1991 disclosure by Bank is a violation of due process.

8. Paramount constitution principles are at issue.

Freedom from tyranny is the central issue. This Court has stated: [t]he right to sue and defend in the courts is the alternative to force. In an organized society it is the right conservative of all other rights, and lies at the foundation of orderly government. . . . Equality of treatment in this respect is not left to depend upon comity between the states, but is granted and protected by the Federal Constitution. *Chambers v. Baltimore & Ohio Railroad*, 297 U.S. 142, 148 (1907).

CONCLUSION

Radloffs petition that a writ for certiorari be issued to the United States Court of Appeals for the Eighth Circuit.

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Of Counsel:
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INDEX TO THE APPENDIX

Judgment of the Eighth Circuit A1

Letter from the Eighth Circuit A3

Judgment of the District Court for the District of Minnesota A5

Excerpts from the Transcript in the state court proceedings of *Radloff v. First American*, dated December 9, 1991 ..... A24

Excerpts from the deposition of Michael Leonard (officer for First American) A28

Judgment and Excerpts from the Opinion of the state trial court, dated July, 19, 1990. ..... A29

Excerpts from the Transcript in the state court proceedings that occurred on September 17, 1990..... A32

Excerpts from a time record of First American's counsel showing a ex parte contact. A38

Order, dated November 28, 1989, closing Radloffs' Bankruptcy Proceedings..... A39

Affidavit of Phillippe De Maeyer A40

The Abandonment; conveying the right to sue First American to Radloffs, dated May 12, 1986..... A42

Lease by the bankruptcy estate to Radloffs
of the land that was later chemically
attacked by First American. A44

Letter from Mutual of New York, dated
July 23, 1987 ..... A46

United States Court of Appeals

FOR THE EIGHTH CIRCUIT

No. 93-3539MNMI

Steven I. Radloff; Barbara Radloff,	*	
	*	
Appellants,	*	
	*	Appeal from the United States
vs.	*	District Court for the District
	*	of Minnesota
First American National Bank of St. Cloud, N.A.; First Farm Corporation, Inc. of St. Cloud, a Minnesota Corporation; Linda Sinotte, in her official capacity as a Court Administrator,	*	
	*	
Appellees.	*	

JUDGMENT

This appeal from the United States District Court was submitted on the record of the district court and briefs of the parties.

After consideration, it is hereby ordered and adjudged that the judgment of the district court in this cause is affirmed in accordance with the opinion of this Court.

October 20, 1994

A true copy.

Attest: s/ Michael E. Gans

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

Mandate Issued November 29, 1994

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 93-3539MN

Steven I. Radloff; Barbara Radloff,	*	
Appellants,	*	
v.	*	
First American National Bank of St. Cloud, N.A.; First Farm Corporation, Inc. of St. Cloud, a Minnesota Corporation; Linda Sinotte, in her official capacity as a Court Administrator,	*	Appeal from the United States District Ccurt for the District of Minnesota.
Appellees.	*	[UNPUBLISHED]

Submitted: October 11, 1994

Filed: October 20, 1994

Before FAGG, MAGILL, and MORRIS SHEPPARD ARNOLD, Circuit Judges.

PER CURIAM.

This appeal has been submitted on the briefs. Based on the record before us, we find no error that would require reversal. Accordingly, we affirm. See 8th Cir. R. 47B.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

UNITED STATES COURT OF APPEALS
For The Eighth Circuit
U.S. Court & Custom House

Michael E. Gans **1114 Market Street**
Clerk of Court **St. Louis, Missouri 63101 (314) 539-3600**

August 16, 1994

Mr. Michael Albert Pinotti
PINOTTI LAW OFFICE
Suite 270
203 E. Little Canada Road
St. Paul, MN 55117-1300

Re: 93-3539MNMI Steven I. Radloff vs. First American Natl.

Dear Counsel:

After further consideration of this appeal the Court has determined that oral argument is necessary.

You will be notified at a later date of the exact time and place of argument.

If you have any questions, please contact me.

Sincerely,

s/s
Trish Boehmer
Calendar Coordinator

tab

cc: Kevin J. Hughes
Michael Joseph Ford
John E. Thomas

District Court/Agency Case Number(s): CIV 4-93-331

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION
4-93-CV-331

Steven I. Radloff and Barbara Radloff	)	
v.	)	ORDER
First American National Bank of St. Cloud, et al.	)	

This matter came before the Court on cross-motions for summary judgment. The Court heard oral argument on August 27, 1993.

For the reasons set forth at the hearing, and based upon all the files, records, and proceedings herein, IT IS ORDERED that:

1. Defendants' motion for summary judgment is granted.

2 Plaintiff's motion for summary judgment is denied.

Dated: August 27th, 1993

s/s
JAMES M. ROSENBAUM
United States District Judge

UNITED STATES DISTRICT COURT

DISTRICT OF MINNESOTA

FOURTH DIVISION

Civil No. 4-93-331

- -

Steven I. Radloff, Barbara Radloff,
Plaintiffs,

-v-

August 27, 1993

First American National Bank of
St. Cloud, N.A., et al,
Defendants.

- -

TRANSCRIPT OF PROCEEDINGS
HAD BEFORE THE HONORABLE
JAMES M. ROSENBAUM
Minneapolis, Minnesota

APPEARANCES:

For the Plaintiff	Michael A. Pinotti John E. Thomas
For the Defendants	Kevin Hughes Paul Harris Michael Ford

Reported By: Dawn M. Sampson RPR-CM

THE CLERK: Your Honor, the matter on the calendar is 4-93-331. Steven Radloff, et al, versus American National Bank, et al. Would counsel please stand and state their appearance?

MR. PINOTTI: Michael Pinotti for the plaintiff, plaintiffs, Steven and Barbara Radloff. John Thomas, of counsel, is with me.

MR. THOMAS: Morning, Your Honor.

THE COURT: Good morning, Mr. Pinotti. Counsel?

MR. HUGHES: Kevin Hughes, Your Honor, representing First American National Bank. My associate Mr. Paul Harris.

THE COURT: Morning, Mr. Harris, Mr. Hughes.

MR. FORD: Your Honor, Michael J. Ford of the Quinlan firm in St. Cloud appearing on behalf of defendant court administrator.

THE COURT: Mr. Ford. Counsel.

MR. PINOTTI: May I begin, Your Honor?

THE COURT: I have cross motions. You may feel free.

MR. PINOTTI: Your Honor, the case presented to you today deals with the issue of whether the Constitution is paramount over deceit by suppression of evidence --

THE COURT: Well, I think we resolved that question, the Constitution is paramount. What injury has been sustained by your clients?

MR. PINOTTI: Loss of property rights under the, ah, umm, dismissal by the bias court below, or state court of the claims that they had.

THE COURT: All right. The question that I would ask you to direct yourself to is whether or not this Court has jurisdiction over the question at all.

MR. PINOTTI: I think under Dennis v. Spartz you have jurisdiction, even if it was a final adjudication on the 1983 claims. When there is bias present in the state court proceedings, because bias spoils those commitments.

THE COURT: Counsel, let's not get ahead of the game. The question is, I want to focus more directly on the federal court's supervisory authority, if any.

MR. PINOTTI: The federal court's empowered to enforce the Constitution and that's what we need to have enforced. We haven't raised the Constitution, or we haven't been permitted to raise, let's put it that way, constitutional claims in state court, that's why our rights to access have been denied.

THE COURT: But isn't there provision whereby you could have gone back and asked the trial court to resolve these questions itself?

MR. PINOTTI: I did. He denied jurisdiction. I mean, all I did was ask him to remove himself because he engaged in this subsequent ex-parte hearing, and he denied jurisdiction on that issue alone. I wasn't going to go back and bring a section 1983 claim in state court under these circumstances.

THE COURT: Why?

MR. PINOTTI: Because, ah -- you're asking -- ah, I feel that the state court has closed ranks on the issue, and I,

there's, I don't think it would be fair for me to have to go back to that court system under these facts.

THE COURT: Well, all right. You went to the United States Supreme Court twice.

MR. PINOTTI: Once.

THE COURT: Well, you asked them to reconsider, didn't you?

MR. PINOTTI: Oh, okay, I did.

THE COURT: That is twice. All right. All right. What does the Rooker/Feldman line of cases tell us?

MR. PINOTTI: It tells us that if there's an unconstitutional proceeding in state court where there is a proceeding or a rule, you can challenge it in federal court. You cannot challenge the merits, however, of the state court proceedings, and we're not challenging the merits of the state court proceedings. We're challenging the procedures used to, number one, exclude us from the substantive ex-parte hearing, and number two, suppress the evidence therefrom for at least a year, or about a year.

THE COURT: What, if anything, did Mattson v. Underwriters tell you?

MR. PINOTTI: Mattson v. Underwriters told me that, umm, ah, basically ruled that the court didn't have jurisdiction to hear the motion to, ah, remove the judge.

THE COURT: Okay.

MR. PINOTTI: And it also is clear that the question of jurisdiction and whether the court has power to adjudicate at all. That's the real question. And if the Court doesn't have,

this Court doesn't have power to adjudicate, then the deceit[1] does reign over the Constitution.

We, ah, you know, I can, we've had enough of this pretended justice. We haven't, ah, ever been given a chance to present our side if the facts, ah, in an atmosphere that was not tainted by spoilage of substantive ex-parte hearing. It just hasn't occurred. The courts won't let us in, and, ah, the Radloffs were prejudiced by the content of that hearing. Their representations were called false as a matter of law, and, ah, the exact content of the hearing that manifested itself within the judgment itself, as I pointed out in my brief. So we ask this Court to enforce the Constitution and grant our motions.

THE COURT: Thank you, counsel. Mr. Hughes.

MR. HUGHES: Thank you, Your Honor. Defendant has filed a cross motion for summary judgment and asked for some additional relief that appears in our moving papers. I would like to address this.

I don't think the federal court has jurisdiction. The matter is res judicata. And the matter fails to state a claim upon which relief could be granted on the facts pleaded, in any event. But there is some scurrilous material that appears in plaintiffs' moving papers, and in their pleadings in this case, not to mention the pretended amicus brief that was filed in this matter under --

THE COURT: For the record, I signed an order permitting, although there was no proper application to file a brief amicus, I permitted its filing. That appears to be the political party, as I understand it. Isn't that United We Stand, isn't that the parole party?

MR. HUGHES: I don't know, Your Honor, I don't know anything about it.

---

[1] Change by Michael Pinotti

THE COURT: They didn't identify themselves, they didn't say why they had an interest, and I filed it and read it.

MR. HUGHES: Very well. Then I'd like an opportunity to address it.

THE COURT: Why don't you do so if you would, briefly, counsel.

MR. HUGHES; First off I would like to handle the pleadings and the summary judgment motion. The action that Mr. and Mrs. Radloff have against the first American National Bank started in 1988.

THE COURT: It's my understanding that the Radloffs had a farm and apparently they defaulted on their mortgage; is that correct?

MR. HUGHES: That's part of it.

THE COURT: Okay.

MR. HUGHES: That case was litigated through, ah, four appeals to the court of appeals in the state of Minnesota, three appeals to the Supreme Court of the state of Minnesota, and a writ for certiori to the United States Supreme Court. All of the issues were presented through about two and a half years of discovery, and summary judgment motions to the trial court, and, ah, the trial court's findings were approved at the appellate level, both at the court of appeals and the state Supreme Court, and not reviewed by the United States Supreme Court.

THE COURT: Then there was a separate trek involving assessment of attorneys's fees and sanctions which were awarded?

MR. HUGHES: That is correct.

THE COURT: And those were appealed?

MR. HUGHES: That is correct. And then there was a third --

THE COURT: There was a third path of appeals.

MR. HUGHES: There was a third track that involved a motion before the trial court requesting the trial court to remove himself and to vacate the judgment on the very grounds that are the basis for the claim here in 19 -- under section 1983.

The trial court has a very, very extensive, very extensive memorandum which is a part of our appendix in this case. It can be find at -- found at defendant's banks appendix page 129, in which Judge Baland in the about 20 pages explains this whole matter that, ah, Mr. Pinotti seeks to bring before the Court in this lawsuit. So that the, ah, allegations of the so-called state court misconduct and our conspiracy with the state court, ah, has been litigated, at the state court trial level, appellate level, intermediate appellate court, and the highest appellate court.

The conduct involved, as the Court can judge from the materials I've indicated, is minimal. It was -- it was some information that was sought by the court at the time. The court was seeking to determine whether or not we, our client, agreed with Mr. Pinotti's position that he could proceed in fact in state district court, rather than going back to the bankruptcy court.

THE COURT: Whether or not the initial, ah, dispute was abandoned by the bankruptcy court itself?

MR. HUGHES: That's correct, Your Honor, and our position --

THE COURT: I think in the cold light of morning it probably would have been more prudent for the judge to have

gotten on the phone with both counsel, but the question is whether I even have jurisdiction to look at the question.

MR. HUGHES: That is correct. The matter has been litigated in the state court under the case law as we understand it. The state court has ruled with respect to that litigation of that matter. The rule was not complied with, the state court has ruled on it, and the federal court has to accept it. That is the way we read the case law.

THE COURT, Does that take care of it?

MR. HUGHES: With respect only, Your Honor, to the amicus brief, I -- I don't want to prolong this matter before the Court, but there is some, some scurrilous material in that, ah, in that, ah, brief. There is some suggestion in this that, ah, the defendant, that is my client, ah, has agreed that, ah, the, ah, conversation that took place with the judge and his law clerk with the location of these documents, ah, is some kind of wrong. That is not the case by any means. This brief would suggest that that was the reason the case was dismissed. That is complete error. Judge Baland --

THE COURT: Let me make it clear. I read that. It appears to be written by someone who didn't have a clue about what the case was about, about what the materials were that have been submitted to the court, or frankly much about anything else other than they seemed to be very unhappy about a lot of things, and I will tell you, I took it because I read it with a good deal of care, and as I read it, there really was no correlation to the facts in this case.

On the other hand, they submitted it, so it's in the record, and it'll go with anybody who has to take a look at it.

MR. HUGHES: I appreciate those responses, Your Honor. The only additional request we would make then to the relief we have requested is that the privilege that is

accorded to legal documents not be accorded to that document so that my client, should this become a matter of publicity, and the Court can clearly notice from the gallery today, that it may well become a matter of publicity, so that my client and others defamed in that matter might be able to bring action if we could ask the Court to consider that possibility.

THE COURT: The court indicated that the document was probably submitted, I mean, as I read it, it was obviously submitted by somebody who was sort of acting as a cheerleader, but it wasn't anybody who really had any data or any basis on which to go, and if you read it, it's quite clear that the people, whoever it were that drafted, really didn't have much familiarity with this case.

MR. HUGHES: Well, I certainly --

THE COURT: And I'll leave it that way. It's filed. Okay.

MR. HUGHES: Thank you, Your Honor.

THE COURT: Thank you, counsel. Mr. Ford.

MR. FORD: Your Honor. I guess just briefly, Your Honor, Mike Ford appearing on behalf of defendant court administrator, and about all I can --

THE COURT: Is that Miss Sinotte or Sinotte?

MR. FORD: Sinotte, Your Honor.

THE COURT: Thank you. And basically the remedy that's being sought against her is apparently she record something. It's not exactly certain what it is they want her to record. Perhaps a different order, but the order was never issued, to my knowledge.

MR. FORD: Actually what I think they want her to do is do nothing with the judgment as made a matter of record. Not writs of execution or levy thereon.

About the only thing I can add to the equation that's already been discussed by both counsel is the fact that despite disclaimers by counsel, this is clearly an attempt to collaterally attack that judgment, and in the Exhibit A to the affidavit, ah, that we submitted, ah, I specifically point to part of the record so that the Court can hear what counsel thinks he's doing, namely, as I've got in my notes here, quote, so the federal court would have jurisdiction over the state court judgments.

That's the reason why my client, the court administer, finds herself here and incurring costs related thereto. We would just ask that even though we haven't brought a motion for summary judgment that given the fact that in our opinion the Court clearly lacks jurisdiction, that the matter be dismissed summarily as to all defendants, and that if the issue of Rule 11 sanctions is appropriate, that the matter, the record be kept open for appropriately noticed motions thereon. Thank you, Your Honor.

THE COURT: Thank you, counsel.

The defendant's motion for summary judgment will be granted.

The plaintiff -- plaintiffs -- Steven and Barbara Radloff, are residents of the state of Minnesota. The defendant, First National Bank of St. Cloud, is a banking institution and has its principal place of business in this state. First Farm Corporation is a Minnesota corporation with its principal place of business in Minnesota. And defendant, Linda Sinotte is sued in her official capacity as the court administer for the Morrison County Court in the state of Minnesota.

In this case the Radloffs claim that their constitutional rights were violated when an ex-parte conversation occurred between the bank, its counsel, and the trial judge regarding the merits of an earlier state action lodged by the Radloffs against the bank. The Court begins with a recitation of facts which were not at all clear from the pleadings on the plaintiff's side. On June 3, 1988, the court, the Radloffs commenced their original action in the -- against the bank, in the Morrison County District Court. That complaint alleged that the bank by various acts forced them into bankruptcy in 1985 and wrongfully destroyed 25 to 35 acres of asparagus in 1986 and then interfered with their purchase of a farm in 1987. The Radloffs' complaint was fulsome. Even after their voluntary dismissal of eight counts, nine causes of action survived. These included fraud, duress, trespass and outrage, wrongful repossession, tortious interference with contract or business advantage, and violations of the Bank Holding Act, which is 12 U.S.C. 1972, restraint of trade, and a breach of a fiduciary duty.

The state trial court judge granted summary judgment in the bank's favor on July 19, 1990. That would have been recorded at the plaintiffs' -- or was sent to the court on Plaintiff's Exhibit A at page 14. The Minnesota Court of Appeals affirmed this on February 5, 1991, and there that was found at the Exhibit A at pages 4 through 13. The Minnesota Supreme Court denied the Radloffs' petition for review on March 27, 1991, and denied their petition for rehearing on April 13, 1991. The United States Supreme Court denied certiorari on October 7, 1991, on 112 S.Ct. 173 and then denied rehearing on December 9, 1991, and that's at 12 S.Ct. -- 112 S.Ct. 650. This appeal, on the merits, was the first of a tripartite appeal effort.

The second, or a second appeals path began on October 17, 1990, when during the pendency of the plaintiffs'

appeal on the merits, the Morrison County courts held a hearing on the bank's motion for attorneys' fees and sanctions. It was then that Mr. Pinotti, counsel for the plaintiffs, first expressed concern regarding an ex-parte contact. When reviewing the bank's attorney's time records he found that on July 12, 1990, the day after oral argument on the original summary judgment motion, the trial court had apparently initiated a telephone call to one Jean Didier, counsel for the bank. There reference Appendix A at 141. The Court notes that were there to have been any second reactive matters of grave concern, it is probably unlikely that they would have recorded it altogether, but that really is not before this Court at this time.

At any rate, according to the trial court judge, and Miss Didier's sworn testimony, the communication concerned in part the defendant's position on one substantive issue. The issue discussed was whether the bankruptcy trustee had in fact abandoned certain claims against the bank which had been pressed. That issue, incidentally, was resolved in favor of the plaintiffs. The entirety of Mr. Pinotti's discussion of this communication at the September 17, 1990, hearing is as follows, and I will quote from what appears to be the record, quote: Then I see here, he refers to the time and billings statements, and I see here on the day after, what is it, where is it? The day after the motion for summary judgment there is an entry on here, quote, telephone conference with Judge Baland's law clerk for a half an hour. Judge Baland for two hours, correspondence with Judge Baland half hour, close quote. I wasn't in on any of those. I think if we're going to proceed on this we're going to have a postponement at least for depositions on it. I haven't had a chance to go through this time record, and I think my clients have the right to confront the witness if we have to, and we still don't have a straight answer what happened on July 12, why we weren't invited to that conversation why there is -- why the bank is billing Mr.

Radloff for a conversation that Miss Didier had with you, addressing the court, your law clerk, that I wasn't invited to. Why are we being billed for that, why do we have to pay for that, assuming the thing was in bad faith? That's appendix A at 48, 49, and 51, that is the transcript of the September 17, 1990, hearing.

The attorney for the bank responded, and again quoting. The reference Mr. Pinotti makes to our bill statement, which was filed by Miss Didier on Friday of last week, is a reference to a conversation that she had with the court's clerk concerning collection of some documents for the court's perusal following the court's point. That is the remainder of that, also from the, ah, appendices. Remarkably, or from the 1990 hearing.

Remarkably, other than a recitation of the fact of the ex-parte communication, the plaintiffs have never, from the date of this first reference until this date, stated or even suggested any actual prejudice which may have resulted from the call.

Now, the Radloffs made no further motions regarding this matter. The Radloffs' appellate briefs on the merits was not due for more than two weeks after this appearance and the statements. But the Radloffs' brief, when filed, made no reference whatsoever to the ex-parte communication.

The issue finally did appear in a footnote to the plaintiffs' appellate brief after the trial court awarded sanctions against Mr. Pinotti. Plaintiffs' appeal on the sanctions was the second of the three appeal streams in the state court. The footnote, which was submitted and read, quote, in addition to the substantive issues, according to the time records of the bank's counsel, on the day after the July 11, 1990, hearing, on bank's summary judgment motion, ex-parte contacts occurred between the trial judge, his law clerk, and bank's counsel.

Now, the court of appeals did not address this footnote, and the ex-parte communication in its opinion. There I would reference the opinion at 470 N.W.2d at 154. That's May 14, 1991. The issue reappeared in an April 4, 1991, petition for rehearing on the merits, which was submitted to the Minnesota S.Ct. That petition merely states that again quoting, the record also includes bank's ex-parte contacts with the trial judge and his law clerk the day after the July 11, 1990, hearing on summary judgment. And there reference the appendix at 7 through 10.

Finally, in plaintiff's June 12, 1991, Minnesota S.Ct. Petition for review, which was not on the merits, but on the issue of sanctions, the Radloffs specifically raise issues of due process, infringement of the right to free access to the courts, and misrepresentation by a party to a court stemming from this ex-parte contact. That's Exhibit 3 at -that's Plaintiff's Exhibit 3 at page 1.

The issue was raised again, in the Radloffs' August 2, 1991, petition for rehearing on the issue of sanctions, see Exhibit A at 18 through 21. The Minnesota S.Ct. having received these allegations, denied each of the plaintiffs' petitions.

During the pendency of their appeals, the Radloffs sought to remove the trial judge and vacation of the trial court's orders granting summary judgment and sanctions. On June -- on December 9, 1991, the court denied plaintiffs' relief, finding that it lacked jurisdiction over the matter since the issue had not been properly preserved at the trial or in the appellate courts, and because no actual prejudice had been shown. Interestingly, in the December 9, 1990, order, the trial court, citing Mattson v. Underwriters at 414 N.W.2d 717 Minnesota, 1987, explained plaintiffs' alternative courses of action, which would or could have preserved the issue. Even

with this advice, counsel for the Radloffs did not seek to reopen to conform his pleadings with the court given advisory.

The plaintiff appealed the December 9, 1991 order. This appeal constituted the third of the appellate tracks in the state court. The Minnesota Court of Appeals dismissed the plaintiffs' appeal, and denied a petition for discretionary appeal. That's Defendant's Exhibit 1 at 148 and 9. The Minnesota Supreme Court, again, denied the plaintiff -- Radloff's petition for further review on April 1, 1992, and that would be the Defendant's Exhibit 1 at 150.

This finally brings us to the present federal action which was filed on April 1, 1993. An amended complaint was filed on July 26, 1993. The amended complaint alleges seven counts, breach of access to the courts in violation of the First, Fifth, and Fourteenth Amendments to the Constitution; violations of First and Fourteenth Amendment procedural due process rights; breach of the right to an impartial tribunal in violation of the Fourteenth Amendment; violation of the right to petition the courts under the First and Fourteenth Amendments; and also for fraud. This matter is now before the Court on cross motions for summary judgment. That judgment would be appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law under Federal Rules of Civil Procedure 56(c), and Celotex v. Catrett at 477 U.S. 317, 322 and 23, 1986, and Anderson v. Liberty Lobby at 477 U.S. 242, 1986. It is fair to note, too, that the plaintiffs' memoranda in support of its motion are prolix, rambling, florid, and quite unfocused.

After considering the foregoing, the pleadings, and the arguments of counsel this morning, this Court finds that this action is barred. Federal district courts, as set forth in the so-called Rooker/Feldman doctrine, are not empowered to review final judgments of state courts, cite District of Columbia Court

of Appeals v. Feldman at 460 U.S. -- 462 at 482, 1983, and Rooker v. Fidelity Trust at 63 U.S. 462, 1923. Rather, appellate jurisdiction over state courts lies with the Supreme Court, and that is at those same cases and 28 U.S.C. 1257, 1988 version.

Certainly a federal court, a federal district court may exercise jurisdiction over, quote, a general constitutional challenge made in a federal proceeding as long as the constitutional challenge is not, internally quoted, inextricably intertwined, closing those quotes, with the claims asserted in the state court proceeding. Cite Keene Corporation v. Cass at 908 F.2d 293, 297, Eighth Circuit, 1990, which cited to Feldman at 482 note 16. But here, the Court finds based on this factual recitation that the federal question is indeed inextricably intertwined with the state proceedings, since to decide the constitutional questions raised in plaintiffs' federal complaint would require this Court to review on the merits multiple state trial and appellate court decisions. Here I would reference Keene at 296 and 7.

The plaintiffs' appropriate course of action was outlined fully in Mattson v. Underwriters at Lloyds, which I referred to before at 414 N.W.2d 717, Minnesota, 1987, which case was on the books even before the first of the Morrison County actions was filed by the plaintiffs.

The Radloffs argue that there's been no adjudication on the merits of their constitutional claims. A plaintiff, however, may forfeit his or her right to obtain relief in a trial court in any federal court where he fails or she fails to properly raise their claims in state court, cite Feldman at 482, note 16. Additionally, the Court finds that the issues presented in the federal complaint are barred by the doctrine of res judicata. Under the doctrine, quoting, a judgment on the merits constitutes an absolute bar to a second suit for the same causes of action. There's an internal ellipsis, not only as to

every matter which was actually litigated but as to every matter which might have been litigated therein. Cite Dorso Trailer v. American Body & Trailer at 482 N.W.2d 771, 774, Minnesota, 1992, and that cited Mattson v. Packman at 358 N.W.2d 48 at 49, Minnesota, 1984.

In the interest of finality, res judicata requires that a plaintiff assert all of their alternative theories of recovery in their initial action. It is clear that the plaintiffs could have raised their constitutional claims in the state court proceedings. It is also clear that the plaintiffs made no objection to the communication at the sanction hearing. As indicated, the plaintiffs certainly knew of the fact of the ex-parte communication fifteen days before the appellate brief on the merits was due, yet they failed to raise it on that appeal. In fact, no constitutional arguments were ever presented till the plaintiffs' petitioned for review to the Minnesota Supreme Court on the issue of sanctions.

And finally, the Court cannot help but notice that even this morning Mr. Pinotti simply said he thought that Minnesota's courts were closed to him so he opted for the federal as opposed to the state. This is not an option that is available. In dismissing the plaintiffs' appeal of the trial court's December 9, 1991, order, the Minnesota Court of Appeals stated, and I quote, appellate's counsel became aware of the ex-parte contact, ellipsis, during the pendency of the second appeal. Appellant's failure to preserve the issue for this Court's determination in the second or the third appeal precludes further review, and they cited Mattson, closing quote.

On this record, and on these facts, the Court will not disturb the state court's rulings, and summary judgment is awarded in favor of the defendants. The Court declines to

award additional sanctions in this matter. And that'll be the order of the Court. Thank you, counsel.

MR. HUGHES: Thank you, Your Honor.

MR. PINOTTI: Thank you, Your Honor

CERTIFIED BY:_____

Dawn M. Sampson

STATE OF MINNESOTA

COUNTY OF MORRISON

IN DISTRICT COURT
LENDER LIABILITY
SEVENTH JUDICIAL
DISTRICT

Steven and Barbara Radloff,

Plaintiffs,

vs.

First American National Bank of St. Cloud, N.A.; and First Farm Corporation, Inc. of St. Cloud, a Minnesota corporation,

Defendants.

HEARING

FILE NO. C3-88-455

TRANSCRIPT OF PROCEEDINGS

Proceedings in the above entitled matter had on the 9th day of December, 1991, at the Morrison County Courthouse, Little Falls, Minnesota, before the Honorable Timothy J. Baland, one of the judges of the above-named District Court.

APPEARANCES

MR. MICHAEL A. PINOTTI
Attorney at Law
Suite 830 Rosedale Towers
1700 West Highway 36
Roseville, MN 55113 - For the Plaintiffs

MR. KEVIN J. HUGHES and
MS. JEAN M. DIDIER
Attorneys as Law
P.O. Box 1187
St. Cloud, MN 56302 - For the Defendants

* * * * * *

REPORTED BY: Sharon K. Anderson, RPR, District Reporter
Wadena County Courthouse, Wadena, MN
56482

Excerpts from the Transcript in the state court proceedings of Radloff v. First American, dated December 9, 1991. . . .

. . . At my direction, my Law Clerk contacted Ms. Didier for assistance in trying to obtain the documents or guidance where they might be able to be found in the Court file. I recall next that some of the pertinent documents had been filed in support of or in opposition to a prior summary judgment hearing held by the Honorable Roger Klaphake, the Judge to whom the case had been assigned long prior to my involvement in the case.

As Ms. Didier's Affidavit of June 21st, 1991 makes clear, she and I spoke about these matters on July 12. It was a brief conversation, a matter of a few minutes at most, not the two hours referred to by Mr. Pinotti. Ms. Didier's response to the questions that I asked about the Bank's position on the validity of the abandonment effectively constituted an acknowledgment that Mr. Pinotti was correct about the applicability of local bankruptcy Rule 115(b). In any event, I came to conclude, upon my independent review that the rules and cases that Mr. Pinotti had called to my attention, that the abandonment had been properly obtained, albeit pursuant to rules which did not require disclosure to the Bank that the abandonment was being sought. See discussion and analysis

of this aspect of the case as set forth on pages 9 - 16 of my Summary Judgment Memorandum.

I turn next to a discussion of the law which applies to ex parte contacts initiated by the Court. Canon 3.A. and 4 of the Code of Judicial Conduct applies in pertinent part that a judge should "except as authorized by law, neither initiate nor consider ex parte . . . communications concerning a pending proceeding." Common sense and common experience, as well as cases such as Graham v. Special School District No. 1, 472 N.W.2d 114, n.6 on page 119, permit us to conclude that not all court-initiated ex parte contacts with counsel are impermissible or improper. Court-initiated ex parte contact regarding scheduling or other similar administrative, non-substantive matters appear to fall outside the parameters of Canon 3.A.(4). Since my request of Ms. Didier for assistance in locating or obtaining a document involving a purely administrative or housekeeping matter did not involve contact that in my judgment violated the prohibition contained in Canon 3.A.(4) of the Code of Judicial Conduct, there is no basis for relief in connection with that aspect of contact.

The same cannot be said however for the questions which I asked Ms. Didier regarding the Bank's position on the finality or validity of the bankruptcy abandonment. Those questions on my part dealt with substantive matters of fact and law. By inquiring into that subject matter, however innocent or well-intentioned, nonetheless constituted a violation of Canon 3.A.(4).

The question then in my judgment becomes whether a violation of Canon 3.A.(4) of the Code of Judicial Conduct as it occurred in this case entitles Radloff to the entry of an Order vacating either judgment or might separately justify my removal from the case under Minnesota Rule of Civil Procedure 63.02 or 63.03.

Mr. Pinotti's affidavit and memorandum in support of his present motion contain a number of statements or assumptions which are not accurate. He proceeds, in part, on the theory that some request or demand was made of me to account for the ex parte contact that occurred on July 12, and implies that I refused to respond.

indicates on here that we did.

Q I think there's a check someplace in here. Just a minute.

A Okay.

Q The bill for Mr. DeMaeyer is 122.50. And there's a check dated June 2nd, 1986 and paid on June 4th, 1986 for the same amount payable to Phil's Spraying Service?

A That's the check that you have here, yes.

Q Yeah. And Phil's Spraying Service is the business entity that Mr. DeMaeyer operates in?

A Yes.

Q What were your reasons for applying the herbicide to these crops?

A We were in the asparagus crown business, and we were selling -- the bank was selling the collateral proceeds of which we had purchased in the bankruptcy court. And we did not want to leave the crops so that someone else could take our market and sell the crops.

Q What was so wrong with leaving the crops for Mr. Radloff to farm?

A As I indicated, we were selling crops, marketing them, and that we did not want other people to be marketing the crops that were ours.

Q So you were trying to eliminate a competitor?

MS. DIDIER: Objection. That calls for a

CERTIFIED COPY

I hereby certify that the within is a full, true and complete copy of the original document as filed and remaining in the office of the Court Administrator.
WITNESS my hand and seal of said Court hereto affixed at Little Falls, MN.
Date July 24, 1990
Signed Linda Sinotte
Court Administrator
By Shari Bucholz
Deputy

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF MORRISON — SEVENTH JUDICIAL DISTRICT

Steven I. Radloff and Barbara Radloff,

Plaintiffs,

vs.

First American National Bank of St. Cloud, N.A.; and First Farm Corporation, Inc. of St. Cloud, a Minnesota Corporation,

Defendants.

ORDER AND MEMORANDUM

Court File No. C3-88455

The above-entitled matter came on for hearing the 11th day of July 1990, at the Courthouse in the City of Little Falls. Plaintiffs were represented by their attorneys, Michael A.

Pinotti and John Thomas. Defendants were represented by their attorneys, Kevin J. Hughes and Jean M. Didier.

Having heard and considered the argument of counsel, having reviewed and considered the documents that were filed in support of or in opposition to the motion, being fully advised in the premises, and on all the files, records and proceedings herein, the Court now makes the following:

ORDER

1. All claims asserted by plaintiffs in the Complaints which have been filed, except those noted in part B, section 2 of this memorandum were withdrawn and are accordingly dismissed with prejudice.

2. Defendants' motion for summary judgment is granted.

3. Plaintiffs' motion for leave to file an Amended Complaint alleging punitive damages on certain counts is denied.

4. Plaintiffs' motion seeking reconsideration of the Court's ruling on the judicial notice question was withdrawn for presentation at a later time by Mr. Pinotti and thus does not require a decision at this time.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated this 19th day of July, 1990.

/s/ Timothy J. Baland
TIMOTHY J. BALAND
Judge of District Court

JUDGMENT

Pursuant to the foregoing Order, judgment is hereby entered accordingly.

Dated this 19th day
of June, 1990.

/s/ Linda Sinotte
Court Administrator

The representations that Radloffs made to the trustee about the value of the claims that they sought to have abandoned were false, and they knew it. Alternatively, the evidence is conclusive to establish that plaintiffs were, at a minimum, negligent in connection with the total inadequacy of the disclosure that they made regarding their claims. The negligence was two-fold: the failure to list or schedule the claims in either bankruptcy proceeding, and the misstatement of value made when they sought to abandon the claims. As was noted in Alwes v. Hartford Life and Accident Insurance Co., "negligence takes the place of intent to deceive when there is a duty to disclose." 372 N.W.2d 376, 379 (Minn. App. 1985). The duty to disclose here is straightforward and unambiguous. See Oneida opinion, part II.

Prejudice and substantial detriment to the bank will occur here because of plaintiffs' conduct, because they obtained the trustee's abandonment until it was too late; plaintiffs prevented or made impossible by reliance by the bank on their representations about the value of their claims. As a direct consequence of the way in which the Radloffs went about things in bankruptcy court, the bank was deprived of an opportunity to be heard in a forum where its right of set-off was preserved or at least potentially available. Had plaintiffs proceeded in a way which resulted in notice to the bank of their request for abandonment, or made disclosure of the existence of the claims they sought to abandon, the bank would at the very least had a procedural due process opportunity to contest matters in bankruptcy court. Plaintiffs own conduct makes proof of the element of reasonable reliance unnecessary on the facts of this case.

STATE OF MINNESOTA — IN DISTRICT COURT

COUNTY OF MORRISON — SEVENTH JUDICIAL DISTRICT

Steven I. Radloff and Barbara Radloff,

Plaintiffs,

vs.

First American National Bank of St. Cloud, N.A.; and First Bank Corporation, Inc. of St. Cloud, a Minnesota corporation,

Defendants.

HEARING

FILE NO. C3-88-455

TRANSCRIPT OF PROCEEDINGS

Proceedings in the above entitled matter had on the 17th day of September, 1990, at the Morrison County Courthouse, Little Falls, Minnesota, before the Honorable Timothy J. Baland, one of the judges of the above-named District Court.

APPEARANCES: MR. MICHAEL A. PINOTTI and
MR. JOHN E. THOMAS
Attorneys at Law
Suite 830 Rosedale Towers
1700 West Highway 36
Roseville, MN 55113, appeared as counsel on behalf of Plaintiffs

MR. KEVIN J. HUGHES and
MS. JEAN M. DIDIER
Attorneys as Law
P.O. Box 1187
St. Cloud, MN 56302, appeared as counsel
on behalf of Defendants

* * * * * *

REPORTED BY: Sharon K. Anderson, RPR, District Reporter
Wadena County Courthouse, Wadena, MN
56482

(WHEREUPON, the following proceeding was duly had:)

THE COURT: This is in Radloff v First American and First Farm. Mr. Pinotti and Mr. Thomas are here for Plaintiffs; Mr. Hughes and Ms. Didier for Defendants. And, counsel, with the help of my Law Clerk I think I would like to start out by passing out a copy of Order and Memorandum with respect to the jurisdictional issue. It's the same thing we talked about by telephone, without a record, on Thursday of last week.

And then my thought would be that we should turn next perhaps to the question of whether or not there is a dispute about costs and disbursements as requested, let me know your positions, probably Mr. Pinotti let me know his position on that. And then turn from there to the question about attorney's fees or sanctions under 549.21 and/or Rule 11, let you each be heard on that. And then conclude with perhaps defense counsel telling me where they stand about Mr. Pinotti's request for a stay of any enforcement, collection efforts, if relief would be granted on either costs or disbursements on the one hand or attorney's fees on the other.

Satisfactory way to proceed?

MR. PINOTTI: We would like to have the Motion on the Postponement on the Motion addressed first, because we feel that's most appropriate as the Supreme Court has addressed that, you know, there should not be multiple appeals on these matters. And, if you award costs and attorney's fees, appeal is probably likely. So I think the issue should be first whether or not we should postpone this matter until the substantive issues on appeal are decided.

THE COURT: All right. You want to be heard on that?

MR. PINOTTI: Sure. Thank you. United States Supreme Court in the Budinich case, as affirmed by the Wisconsin Appellate Court, has decided that matters of these issues of costs and disbursements should be delayed or postponed until the substantive issues are resolved and appealed.

THE COURT: What's the cite, Mike?

MR. PINOTTI: 480 U.S. 196, at page 200. Wisconsin case is 455 N.W.2d 268, 271.

THE COURT: 268, 271.

MR. PINOTTI: B-u-d-i-n-i-c-h vs. Becton Dickinson & Company. And Wisconsin case is the American Civil Liberties Union vs. Governor Thompson.

THE COURT: And the page on 480 U.S.?

MR. PINOTTI: Starts at 196. The relevant language is at page 200. It's on my Brief dated August 30, 1990.

THE COURT: All right. Other comments?

MR. PINOTTI: Just, the matter should be resolved until that time because if something is awarded now, and depending on what the Court of Appeals does, it may have to be changed. Of course, if the Court of Appeals affirms, and it is affirmed by the Supreme Court, then this Court should take this Motion into consideration at that time. But the most important thing at this point and time is to save everybody's time, this Court's time, the Court of Appeal's time, and my time.

And, frankly, I didn't understand what was the significance of the telephone conference the other day, because we did not question the jurisdiction of this Court in our Memorandum, we just said the question ought to be postponed. Then, I guess, it became clear to me when I

received Ms. Didier's Affidavit following the -- by express mail -- what the purpose of the ruling was.

She should have submitted this in a timely manner. I don't have time to look over this. I have other things besides this case. I mean, this has got to be somewhere in the neighborhood of 150 - 200 pages, and I'm supposed to look at this on Friday afternoon. I mean, c'mon. Then I look at it and I see here on the day after -- Where is it? The day after the Motion for Summary Judgment there is an entry on here "Telephone conference with Judge Baland's Law Clerk for a half an hour; Judge Baland for two hours; correspondence with Judge Baland a half hour." I wasn't on any of those.

THE COURT: Well, you're referring to documents that I've not seen.

MR. PINOTTI: Oh. Yeah, but it's just such a shock to me, you know, that this stuff appears. So, I'm, you know -- I think that if we're going to proceed on this we have to have a postponement at least for depositions on it.

THE COURT: Mr. Hughes.

MR. HUGHES: Thank you, Your Honor. There is no reason for a postponement of this case. If there is an Appeal from any Judgment, the Court -- or any Order the Court would order would be consolidated appeal and presently pending before the Court -- excuse me -- The parties and Court will waste more time postponing this Motion than hearing it today and deciding it.

The reference Mr. Pinotti makes to our Bill Statement, which was filed by Ms. Didier on Friday of last week, is a reference to conversation that she had with the Court's Clerk concerning collection of some documents or Court's perusal following the Court's Summary Judgment Motion. We oppose the Motion at this point.

THE COURT: Can someone tell me what's in the packet? If it's been filed, it's not made it to my desk.

MR. PINOTTI: The timing records, Your Honor, from the law firm.

THE COURT: So it's documents to support the request for attorney's fees?

MR. HUGHES: It's our time and billing statements, Your Honor, in the interest of whatever the Court may wish to examine for purposes of making a determination on any award for attorney's fees or the that the Court may determine.

THE COURT: All right. Counsel, I asked my Law Clerk to get those three cases that I cite in the Memo on jurisdiction. My recollection when I read those last Thursday is that one of them urges the Court not to postpone but to hear and decide. I'm going to look at those briefly, and then I'll ask my Law Clerk to get these other two cases that Mr. Pinotti just cited. 480 U.S. -- what year is that from? Do we know?

MR. PINOTTI: 1988. The U.S. Supreme Court

FEE STATEMENT

IN ACCOUNT WITH

HUGHES, THOREEN, MATHEWS & KNAPP

ATTORNEYS AT LAW
P.O. BOX 1187
ST. CLOUD, MINNESOTA 56302-1187
(612) 251-1474

07/09/90	JMD	PREPARE CASE FOR SUMMARY JUDGMENT MOTION AND CONF W KJH(4.5 HR): TELE CONF WITH CLERK OF COURT (2.2 HR): RESEARCH/ ANALYZE ONEIDA UPDATE (.4 HR)	5.10	510.00
07/09/90	KJH	PREPARE FOR HEARING SUMMARY JUDGMENT	5.00	625.00
07/09/90	4SS	INFORMATION GATHERING	.50	25.00
07/10/90	JMD	DRAFT/REVISION OF AFFIDAVIT OF T PIERSIALLA (.4 HR): TELE CONF W C SCHMIDT (.2 HR). T PIERSIALLA (.2 HR). CLERK OF COURT (.2 HR): JUDGE'S CLERK 2X (.3 HR): PREPARE FOR SUMMARY JUDGMENT HEARING	8.50	650.00
07/10/90	KJH	PREPARE FOR HEARING SUMMARY JUDGMENT	3.50	437.50
07/10/90	4SS	PICK-UP AND/OR DELIVERY COURTHOUSE-RESTATEMENT OF TORTS	.50	30.00
07/11/90	JMD	PREPARE FOR HEARING (INCLUDING AFFIDAVIT ETC)(2 HR): ATTEND HEARING FOR SUMMARY JUDGMENT MOTION AND PUNITIVE DAMAGES (5 HRS-NO BILL)	7.00	700.00
07/11/90	KJH	PREPARE FOR HEARING SUMMARY JUDGMENT(4 HRS); ATTEND HEARING (5 HRS)	9.00	1,125.00
07/12/90	JMD	TELEPHONE CONFERENCE WITH J BALANDS CLERK (3X) (.5 HR). J BALAND (.2 HR): CORRESPONDENCE WITH J BALAND (2X) (.5 HR): RESEARCH/ANALYZE RE: ABANDONMENT CASES CITED BY JUDGE (1 HR): REVIEW FILE AND REORGANIZATION	2.20	220.00
07/12/90	KJH	REVIEW OF ISSUES AND SCHEDULE FOLLOWING SUMMARY JUDGMENT	1.00	125.00

UNITED STATES BANKRUPTCY COURT

In Re a Petition for Relief under Chapter 7 of Title 11, U.S. Code, filed by or against the below-named Debtor(s) on October 18, 1985:

DEBTOR: STEVEN IRVIN RADLOFF of ROUTE 1, BOX 159, LITTLE FALLS, MN 56345, aka/dba RAK FARMS (DBA), OAK FARMS (DBA), SSAN: 474-54-9333

JT. DEBTOR: BARBARA JEAN RADLOFF, SSAN: 476-56-2151

CASE NO. 5-85-00162 RJK

ORDER CLOSING ASSET CASE
AND DISCHARGING TRUSTEE

SAMUEL V. CALVERT, the trustee of the estate in this case, having filed a final report and account after distribution which states that all property under 11 U.S.C. sec. 725 has been disposed of, that all property of the estate has been fully administered, and which requests that the trustee be discharged and the case closed under 11 U.S.C. sec. 350 (a); and the U. S. Trustee having filed a certificate of final audit which does not object to such discharge or closing;

IT IS ORDERED, that the trustee of the estate in this case is discharged and the case is closed.

Date: 11/28/89 /s/ Robert Kressel
Bankruptcy Judge

AFFIDAVIT OF PHILLIPPE DE MAEYER

STATE OF MINNESOTA)
) SS
COUNTY OF MORRISON)

I, Phillippe De Maeyer being duly sworn upon oath, hereby states as follows:

1. I, Phillippe De Maeyer, reside at Box 252, Little Falls, Minnesota 56345.

2. I am in the business of spraying crops from an airplane.

3. On or about May 27, 1986 I sprayed Round-up herbicide upon Mr. Steven I. Radloff's property.

3. The chemical was given to me by Mr. James Ambuehl.

4. He instructed me to use this herbicide on Mr. Radloff's property North of Little Falls, Minnesota, in the presence of Mike Leonard.

5. I billed the bank for the service, they paid me what I billed. Exhibit a to this affidavit is a true and correct copy of my bill to First American Bank in St. Cloud for spraying Mr. Radloff's crops.

FURTHER YOUR AFFIANT SAYETH NOT.

By /s/ Phillippe De Maeyer

Subscribed and sworn to a notary public on August 5, 1988.

EXHIBIT A

PHIL'S SPRAYING SERVICE
Box 252 Little Falls, Minnesota 56345 Tel. 612/632-2744
Little Falls 5/29/1986.

Gentlemen,

This is the bill for the aerial spraying done on 35 acres of asparagus, North of Little Falls. The chemical used is Round-up at a rate of 1 quart per acre, mixed with 1 quart per acre of crop oil and six gallons of water.
The job was done on May 27, 7:00 PM.

TOTAL: 35 X $ 3.50 = $122.50

Thank you very much for your business,

Sincerely yours,

By /s/ Phillippe De Maeyer

Phillippe De Maeyer.
Chief-pilot.

(emphasis added)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

STEVEN IRVIN RADLOFF
BARBARA JEAN RADLOFF CERTIFICATE OF SALE, ABANDONMENT OR OTHER DISPOSITION OF PROPERTY

I, Timothy R. Walbridge, Clerk of the United States Bankruptcy Court for the District of Minnesota, do hereby certify . . . attached one page is a true and complete copy of the original . . . abandonment or other disposition of property filed on May 12, 1986 in this office in the captioned bankruptcy case by the trustee . . . debtor in possession with respect to the property described therein, and that I have searched the file and examined the docket of the court in this case, as of 8:00 A.M. on the date of this certificate, . . . that no objection to such sale, abandonment, or other disposition of property has been filed, . . . that Samuel V. Calvert is the duly appointed and acting trustee in this case or the debtor . . . the powers of a trustee, no trustee having been appointed, and that, after notice and opportunity for a hearing, the trustee or debtor in possession may sell, abandon or otherwise dispose of property including the compromise or settlement of a controversy under 11 U.S.C. Sec.s 363, 554, 704, 725, 1106 or 1107.

WITNESS my official signature
(SEAL OF BANKRUPTCY COURT) and the seal of said court at Duluth, MN in said District.

Dated: January 21, 1988.

TIMOTHY R. WALBRIDGE
Clerk, U. S. Bankruptcy Court Clerk of Bankruptcy Court
416 U. S. Courthouse
Duluth, Minnesota 55802 By /s/ Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In the Matter of:

Steve &
Barb Radloff
Debtor.

REPORT OF ABANDONMENT
OF PERSONAL PROPERTY
$100 OR LESS
Case No. Ch. 7 5-85-162

* * * * * * * * * * * * * * * * * *

Sam V. Calvert, the Trustee of the estate of the above named debtor, reports:

At the commencement of the case, there existed an interest of personal property of the estate of a value of $100 or less in excess of perfected encumbrances and allowed exemptions, described as follows: Any and all causes of action between the debtor and the First American National Bank.

The Trustee is satisfied that the above-described property is burdensome or of inconsequential value to the estate because: the specific causes of action have been determined, and the trustee has abandoned said property.

DATED: 4-10-86

/s/ Sam Calvert
Same V. Calvert
P.O. Box 1044
St. Cloud, MN 56302

DATED: Apr 17 1986

/s/ William P. Westphal
William P. Westphal, Sr.
United States Trustee

Filed May 12, 1986
Timothy R. Walbridge, Clerk, Bankruptcy Court

By /s/ Deputy Clerk

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA
UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Steven Radloff and
Barbara Radloff

Case No. BKY 5-85-162
Debtor(s): Chapter 7 Case.

NOTICE, REPORT, MOTION AND CERTIFICATE UNDER LOCAL RULE 115(b) FOR SALE OF PROPERTY UNDER $1500, ABANDONMENT OF PROPERTY, LEASE OR PROPERTY, OR SETTLEMENT OF CONTROVERSY, WHERE CREDITOR HAS REQUESTED NOTICE UNDER BANKRUPTCY RULE 2002(i)

TO: The United States Trustee and the other entities that have requested notice.

Notice On May 3, 1986, or as soon thereafter as the transaction may be completed, subject to objection under applicable rules, the undersigned trustee will (circle one) sell property, lease property, abandon property, or settle a controversy, as follows:

Approx. 160 acres --- NE 1/2 SE 14; SE 1/4 NW 1/4; S 1/2 NE 1/4; W 1/2 NW 1/4 Less N. 208 feet of E. 800 feet of NW 1/2 NW 1/4 and N. 495 feet of NW 1/4 SW 1/4 Sec. 20, Township 130, Range 29, Morrison County, MN. Lessee: Steven I. Radloff. Lease Term: 1986 crop year Lease Price $5,000, cash __ was negotiated by MONY, and a local farm advocate indicated that it seemed to be a fair price.

. . . .

MOTION AND DECLARATION The undersigned trustee reports there is no creditors' committee and that notice is

given to those entities that have filed requests for notice pursuant to applicable rules, moves the court for such orders as may be necessary or appropriate, and declares under penalty of perjury that on 5-3-86 the undersigned mailed a copy of this instrument to each entity named below at its address of record, to wit:

United States Trustee; and MONY, Chesterfield, MO

Dated and
Executed on: May 3, 1986. Signed: /s/ Sam Calvert, Trustee
Name: Sam V. Calvert
Address: 925 1st St. South
St. Cloud, MN 56302
Telephone: 612/255-1456

Certificate The United States Trustee hereby certifies that the United States Trustee has reviewed and agrees with the reduced notice and sale, abandonment, in the foregoing instrument.

Dated: May 7, 1987 WILLIAM P. WESTPHAL, SR.
United States Trustee

GOPLEN EXHIBIT NO. 11

July 23, 1987

Mr. Steve Radloff
Route 1, Box 159
Little Falls, Minnesota 56345

RE: MONY FRE #11098

Dear Steve:

This is to inform you that your bid of $80,000 to purchase our interest in the share of certificate on land near Royalton has been declined. A better offer has been accepted for the buy out of our interest. Your offer of $101,000, which included crops remaining in place, was not accepted for the following reasons: As it has been conveyed to us that the bank will claim all interest in growing crops on this partial. Also the bank or its assign are in possession of the property during redemption by means of a purchase of the redemption right from the bankruptcy trustee. With these two things in mind, we do not feel that we can guarantee to you that the crops will be remaining on the farm once the redemption ends. We have been informed that they will take action on the to the crops consistent with their ownership rights, be they what they may. We do not feel that it would be in our interest to pursue this matter. We regret that this decision has not been made in your favor but as per the terms of the previous letter from me regarding the criteria for bidding, both parties were on equal grounds. The only problem with your higher bid was that we cannot guarantee that the crops stay with the land and that the plantings will be there at the end of redemption.

If you have any further questions, feel free to give me a call.
Sincerely,

/s/ Neal R. Goplen

Neal R. Goplen
Director of Agricultural Investments

NRG/vrw